

(1925) 12 CAL CK 0002

Calcutta High Court

Case No: None

P. Banerjee, Sanitary Inspector,
Howrah Municipality

APPELLANT

Vs

Bipin Behary Ghose and Another

RESPONDENT

Date of Decision: Dec. 9, 1925

Acts Referred:

- Bengal Food Adulteration Act, 1919 - Section 21
- Criminal Procedure Code, 1898 (CrPC) - Section 403

Citation: AIR 1926 Cal 691 : 95 Ind. Cas. 79

Hon'ble Judges: Duval, J; C. C. Ghose, J

Bench: Division Bench

Judgement

1. This Rule was issued calling upon the District Magistrate and the accused why the order of the 25th August referred to in the petition should not be set aside and the case tried according to law.

2. The facts are as follows:---It appears that on the 8th November, 1924, the Sanitary Inspector of the Howrah Municipality filed a complaint before the Deputy Magistrate of Howrah against the accused u/s 21 of Act VI of 1919 (the Bengal Food Adulteration Act 1919) for selling adulterated milk in contravention of Section 6, Sub-clause (1) of the said Act. The prosecution of the accused was under the orders of the Chairman of the Municipality and at the time the prosecution was instituted there was no order or consent in writing of the Municipal Commissioners, of Howrah within the meaning of Section 15 of the said Act. In that state of things the Deputy Magistrate, before whom the case, was pending, passed the following order:---"The offence as taken cognizance of stands ipso facto vitiated for want of a valid sanction under the recent ruling of the High Court. The subsequent confirmation of the Chairman's action by the Municipal Commissioners cannot cure the inherent defect of the present proceeding as it is. Accused acquitted, Section

245, Cr. P. C." This was on the 27th March, 1925. On the 15th May, 1925, the Municipal Commissioners of Howrah passed a resolution at a meeting sanctioning the prosecution of, among others, the said accused under the said Act. Accordingly on the 15th June, 1925, a petition of complaint against the accused persons was filed before the Deputy Magistrate, but on the 25th August the Magistrate acquitted the accused by the following order:---"I find that the present accused was acquitted by Babu D. R. Ghose, Deputy Magistrate, on, the 27th March, 1925, in a previous case which was brought against him by the Municipality for committing the very same offence with which he is charged in this case. I do not think the accused can be tried in this case for the same offence so long as the order of acquittal in a previous case is not upset by some higher Court. The case cannot proceed any further. Accused acquitted, Section 245, Cr. P. C".

3. Against the last mentioned order the present Rule is directed and it is contended on behalf of the complainant that the previous acquittal having been because of the want of sanction u/s 15 of the Act and that defect having been now cured, there was nothing to prevent the Magistrate going on with the present trial, as the previous acquittal could not operate as a bar. It is also argued that there having been no "trial" within the meaning of Section 403, Cr. P. C., of the accused in the previous case, the order of acquittal dated the 27th March, 1925, could not stand in the way of the present trial.

4. We think" that the contentions urged on behalf of the complainant are sound and ought to be given effect to Section 15 of the Bengal Food Adulteration Act, 1919, runs as follows:---"No prosecution for any offence under this Act shall be instituted without the order or consent in writing of the local authority within whose jurisdiction the offence is committed". The expression "local authority" is defined, in the Act itself as meaning in the case of any Municipality the Municipal Commissioners. It would, therefore, follow on the facts set out above that there having been no order or consent in writing of the Municipal Commissioners prior to the 15th March, 1925, sanctioning the prosecution of the accused for any offence under the said Act, the prosecution of the accused undertaken previously was incompetent and no cognizance could have been taken by any Court of any offence alleged to have been committed by the accused. It would further follow that in the circumstances mentioned above there could have been no trial of the accused within the meaning of Section 403, Cr. P. C. A verdict of acquittal is no doubt immune from challenge; but it is only when an accused has been "tried" and acquitted of an offence that the immunity arises. In this case no question of immunity can possibly arise and we are of opinion that the previous acquittal cannot operate as a bar to the present trial [see in this connection *Umeruddin v. Emperor* 2 Ind. Cas. 219 : 31 A. 317 : 6 A.L.J. 262 : 9 Cri. L.J. 526. We, therefore, make the Rule absolute and send the case back to the District Magistrate for trial by such Magistrate as may be nominated by him.